

**REMARKS**

Claims 15-30 are pending in this application. Claims 15, 18, 23, 27, 28, and 30 are amended. Claim 17 is cancelled. Support for these amendments can be found in the specification and claims as originally filed. No new matter has been added.

**Interview Summary**

Applicant thanks the Examiners for the courtesy of the interview held on April 29, 2008, with counsel for Applicant. During the interview the pending rejections were discussed in light of proposed amendments. The possibility of submitting a declaration to show unexpected results was also discussed.

**Rejections Under 35 U.S.C. § 102(b)**

The present invention relates to an emulsifiable concentrate that avoids crystallization at low temperature comprising a dinitroaniline active ingredient and a co-solvent.

Claims 15, 16, 19, 21, 22, 23, 26, 28, and 29 are rejected under 35 U.S.C. 102(b) as anticipated by Aven (EP 1025757 A1). *See* Office Action at 2. According to the Office Action, Aven teaches crop protection emulsifiable concentrate containing defoaming agents and the disclosure set forth in the Office Action at pages 2-4. Moreover, according to the Office Action, Aven teaches that “[a] particularly preferred cosolvent is a mixture consisting of glutaric acid dimethyl ester, succinic acid dimethyl ester, and adipic acid dimethyl ester, most preferred DBE.” Office Action at 3.

Applicant has amended claims 15, 23, and 28 to clarify what is claimed. Applicant respectfully submits that Aven does not teach a diester co-solvent being a mixture of diisobutyl adipate, diisobutyl glutarate, and diisobutyl succinate as recited by amended claims 15 and 28. Indeed, the Office Action states that, “Aven does not teach the co-solvent being...a mixture of

diisobutyl adipate, diisobutyl glutarate, and diisobutyl succinate.” Office Action at 7. Accordingly, Applicant submits that Aven does not teach the subject matter of amended claims 15 and 28 (or the rejected claims that depend on these claims) and this rejection should be withdrawn.

**Rejections Under 35 U.S.C. § 103(a)**

Claims 20, 24, 25, and 27 are rejected under 35 U.S.C. §103(a) as unpatentable over Aven (EP 1025757 A1). *See* Office Action at 5. Applicant respectfully traverses.

Applicant has amended claim 15 (upon which claims 20, 24, and 25 depend) and claim 27 to clarify what is claimed. Applicant respectfully submits that Aven does not teach a diester co-solvent being a mixture of diisobutyl adipate, diisobutyl glutarate, and diisobutyl succinate as recited by amended claims 15 and 27. Indeed, the Office Action states that, “Aven does not teach the co-solvent being...a mixture of diisobutyl adipate, diisobutyl glutarate, and diisobutyl succinate.” Office Action at 7. Therefore, Applicant respectfully submit that the teachings of Aven alone are insufficient to establish a *prima facie* case of obviousness with respect to the claims as amended. Accordingly, Applicant requests that this rejection be withdrawn.

Claims 17, 18, and 30 are rejected under 35 U.S.C. §103(a) as unpatentable over Aven (EP 1025757 A1) in view of Hei (6,593283) as evidenced by Sealed Air (MSDS Instapak Port Cleaner, Rev. 006, 03/2005). *See* Office Action at 7. According to the Office Action, “Aven does not teach the co-solvent being a diisobutyl adipate or a mixture of diisobutyl adipate, diisobutyl glutarate, and diisobutyl succinate.” *Id.* To remedy this deficiency, the Office Action relies on Hei, which according to the Office Action teaches, *inter alia*, dibasic esters such as DBE and DBE-IB. *See* Office Action at 7-8. Moreover, according to the Office Action, Hei teaches that its composition is suitable for application to growing or harvested plant material

including leaves, stems, tubers, roots, seeds, and the like. *See* Office Action at 8. The Office Action also cites Sealed Air as disclosing that DBE-IB is a composition comprising 55-70% diisobutyl glutarate, 20-30% diisobutyl succinate, and 10-20% diisobutyl adipate. *See* Office Action at 8. Therefore, according to the Office Action, Hei teaches a composition useful for plant protection wherein the solvents DBE and DBE-IB are suitable alternatives for each other, and it would have been obvious to one of ordinary skill in the art to combine the teachings of Aven and Hei. Applicant respectfully traverses.

Claim 17 has been canceled, claim 18 has been amended to correct its dependency, and claim 30 has been amended to clarify what is claimed. Applicant notes, however the that some of the subject matter of canceled claim 17 and amended claim 30 has been incorporated into independent claims 15, 27, and 28.

Emulsifiable concentrates of dinitroaniline compounds often suffer from crystallization at low temperatures or upon mixing with water, which may result in problems including loss of activity or filter clogging. *See* Specification at p. 1, line 26-30. Applicants have discovered that the claimed compositions unexpectedly exhibit reduced crystallization at low temperature and therefore a reduction in the problems associated with unwanted crystallization. *See* Specification at p. 2, lines 31-34 and Example 1. In view of these unexpected results, Applicants respectfully submit that the subject matter of the present claims would not have been obvious to one of ordinary skill in the art. Accordingly, Applicants request withdrawal of this rejection.

### **CONCLUSION**

An indication of allowance of all claims is respectfully solicited.

Respectfully submitted,

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